IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.946 OF 1988
WITH
CROSS OBJECTION (ST) NO.10572 OF 1989

The State of Maharashtra)
(At the instance of Special Land)
Acquisition Officer No.16, Kolhapur).)...Appellant

Versus

Shamrao Ganpatrao Mandalik,)
(since deceased through his legal)
representatives):)

1. Shri Ranjitsinh Shamrao Mandalik,)
2. Shri Ratnakar alias Kirtiraj)
Shamrao Mandalik,)
3. Kum.Rajkuwar Shamrao Mandalik,)
4. Smt.Padmaja Manohar Desai,)
5. Sau.Alka Krishnarao Sankpal,)
6. Sau.Amrutkuwar Nivasrao Jagrap,)
7. Sau.Sanyogita Anil GAdre,)
8. Sau.Shailaja Uday Bhosale.)...Respondents

Shri S.N.Gawade, A.G.P for the Appellant.

Shri S.M.Kazi for the Respondent Nos.1 to 5, 7 and 8.

CORAM : ABHAY S. OKA, J.

DATE : JANUARY 09, 2007.

JUDGMENT:

1. Heard the learned A.G.P for the Appellant and Shri Kazi for the Respondent. The challenge in this Appeal is to the Judgment and Award dated 24th September, 1987 passed by the learned Additional District Judge, Kolhapur in Land Acquisition Reference

No.58 of 1983. The acquisition relates to the land bearing R.S.No.3822 admeasuring 2 Ares situated at Kasba Karveer, Taluka Karveer, District Kolhapur. The notification under section 126(2) of the Maharashtra Regional and Town Planning Act, 1966 read with section 6 of the Land Acquisition Act, 1894 was issued on 28th November, 1974. The Respondent claimed compensation of Rs.15,000/- for the land as well as for the well over the land. The size of the well was 45 feet X 30 feet and the depth was of about 30 feet. The Special Land Acquisition Officer awarded market value of Rs.1/- for the land and compensation for the well was not awarded. The Award was made on 11th July, 1983. The impugned Judgment and Award has been passed in a reference under section 18 of the Land Acquisition Act, 1984 filed at the instance of the Respondent. By the impugned Judgment and Award, the learned Trial Judge held that the market value of the well was Rs.9875/-. The learned Judge held that out of area of 2 Ares, the well had occupied area of 1591 sq.feet. By taking the market value of the remaining land at the rate of Rs.6/- per sq.feet, the learned Judge held that the market value of the land which is not occupied by the well was Rs.3522/-.

2. The learned A.G.P submitted that the learned Trial Judge rejected the evidence of the expert valuer appointed by the Respondent and therefore, no compensation could have been granted in respect of the well. He submitted that the learned Judge committed an error by relying upon the rates of stones in the Public Works Department Manual in as much as the said Manual was not produced in evidence. He submitted that compensation in respect of well could not have been awarded. He submitted that even in respect of area which was not covered by the well, the market value at the rate of Rs.6/- per sq.feet could not have been awarded in much as in respect of a similarly situated land, market value at the rate of Rs.3/- per sq.feet has been confirmed by this court by a Judgment delivered today.

3. The learned Advocate for the Respondents submitted that detailed measurements of the well and the fact that stones were used while constructing well are borne out by the record and there is hardly any dispute about the same between the parties. He submitted that in view of the admitted position as regards area of the well, the learned Judge has adopted the market value of the stones as appearing in the

Manual published by the Public Works Department of the State Government and therefore, no fault can be found with the valuation of the well made by the learned Trial Judge. He submitted that so far as compensation in respect of land is concerned, the Award at Exhibit 20 shows that in case of similarly situated land, the market value fixed by the Special Land Acquisition Officer is Rs.6/- per sq.feet. He submitted that no interference is called for.

4. I have considered the submissions. I have also perused the record. The area of the acquired land bearing R.S.No.3822 is 2178 sq.feet and area occupied by the well is 1591 sq.feet. Thus, the area of the open land out of the acquired land is 587 sq.feet. The learned Trial Judge has fixed the market value of the open land at the rate of Rs.6/- per sq.feet. The learned Judge has relied upon an Award under section 11 of the said Act of 1894 in respect of the land bearing R.S.No.377. The date of the Award is 26th April, 1985. If the evidence of the Respondent as regards location of the acquired land is considered alongwith the description of the acquired land in the Award at Exhibit 20, it appears that the acquired land in this Appeal and the land subject matter of the Award at

Exhibit 20 are comparable lands. However, the date of notification in case of Award at Exhibit 20 is 16th April, 1981. The notification in the present case is issued on 28th November, 1974.

5. First Appeal No.945 of 1988 which is decided today by a separate Judgment relates to a land bearing R.S.No.382/B admeasuring 2 Ares which was notified for acquisition in December 1974. The land subject matter of First Appeal No.945/88 is situated in close proximity of the land which is subject matter of this Appeal.

6. In First Appeal No.945 of 1988, this court has confirmed the market value fixed at the rate of Rs.3/- per sq.feet. The basis for arriving at the market value was the same Award at Exhibit 20. As stated earlier, the relevant date in respect of the land subject matter of the said Award is of the year 1981 and therefore, the learned Trial Judge could not have taken the market value of the year 1981 as the basis of fixing the market value of comparable land as on 28th November, 1974. Considering the decision of this court in First Appeal No.945 of 1988, in my view, market value of the land will have to be fixed at the Rs.3/-

per sq.feet.

7. So far as compensation awarded in respect of the well is concerned, the learned Trial Judge has rejected the evidence of Shri Ashok Ganpat Shinde, a valuer appointed by the Respondents. The learned Trial Judge, in my view, rightly found that there was no basis for the opinion of the expert regarding market value of the well. Moreover, no date was mentioned in the valuation report at Exhibit 15 prepared by the said expert.

8. The learned Trial Judge has calculated the cubic area of stones used for construction of the well and has applied rate of stones as per the Public Works Department Manual. The Respondents have not produced and proved the said Manual in evidence. It is well settled position of law that in a reference under section 18 of the said Act of 1894, the claimant is in the position of the Plaintiff and the entire burden to prove the correct market value of the property acquired is on the claimant. In the present case except for the opinion of the value which is rightly discarded by the Trial Court, no further evidence was led by the Respondent Claimant to establish the market value of

the well. In my view, the Award of the Trial Court in so far as it relates to market value of the well will have to be quashed and set aside.

9. Thus, the Respondent will be entitled to market value of open area of 587 sq.feet at the rate of Rs.3/- per sq.feet. The Respondent is also entitled to all statutory benefits as granted by the Trial Court. However, the Respondent will be entitled to only one half share in the compensation as admittedly he had one half share in the acquired land. Hence, Award passed by the Trial Court will have to be modified.

10. Hence, I pass the following order:

(i) The Respondent will be entitled to market value of area of 587 sq.feet at the rate of RS.3/- per sq.feet.

(ii) The Respondent is not entitled to any compensation in respect of the well on the acquired land.

(iii) Considering the date of Award under section 11 of the Land Acquisition Act, 1894, the

Respondent will be entitled to solatium under sub-section 2 of section 23 and interest under section 23(1-A) of the said Act of 1894 on the market value of area of 587 sq.feet. The Respondent will be also entitled to interest under section 28 of the said Act of 1894.

(iv) The Trial Court will make necessary calculation of the amount payable to the Respondent in the light of what is held in the judgment. This exercise shall be completed by the Trial Court within a period of three months from the date of receipt of the writ of this Judgment. It is clarified that the Respondent will get only 1/2 of the compensation as per his share.

(v) The Respondents will be entitled to proportionate costs throughout from the Appellant.

(vi) Appeal is partly allowed in above terms.

(vii) Writ to be sent immediately.

JUDGE